

THE HON. CHARLES A. LEGGE

O.T.O. v. Motta

Findings of Fact and  
Conclusions of Law

The following Findings of Fact represent the early conclusions of the U.S. District Court for Northern California in our lawsuit against Marcelo Motta, and should be read in conjunction with the Judgment that immediately follows.--H.B.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

GRADY McMURTRY, et al,

Plaintiffs

v.

SOCIETY ORDO TEMPLI ORIENTIS, et al,

Defendants

THE ACTION WAS TRIED to the court without a jury from May 13 through May 17, 1985, and was then submitted for decision. The court has heard the testimony, read the exhibits, and weighed the evidence. The court makes the following findings of fact by a preponderance of the evidence, makes the following conclusions of law, and directs that judgment be entered in favor of plaintiffs and against defendants on plaintiffs' complaint, defendants' counterclaims, and plaintiffs' counterclaims to the counterclaims.

For simplicity, plaintiffs, counter-defendants, and counter-counter plaintiffs will be called ``plaintiffs;' ' and defendants, counterclaimants, and counter-counter defendants will be called ``defendants.' '

#### FINDINGS OF FACT

1. The organization and system of beliefs which is called ``Ordo Templi Orientis' ' or ``OTO' ' is a mystical and fraternal organization begun around 1900. The chief international executive of OTO is known as the ``Outer Head' ' or ``OHO.' ' Aleister Crowley became OHO in approximately 1921 and served until his death in 1947. Crowley wrote, or rewrote from earlier versions, many of the rituals, doctrine, and interpretative and instructive literature of OTO. Crowley set forth the rules of operation and procedures of OTO in numerous books, essays, and correspondence.

2. OTO had and now has lodges where its members meet. One such lodge, which existed during the 1930's and subsequently, was Agape Lodge in California.

3. After Crowley's death, Karl Germer became the OHO.

4. At his death, Crowley left all of his previously undisposed intellectual and tangible literary property to OTO. As OHO, Karl Germer took possession of all of the tangible property of OTO around 1950 and moved the property to California.

5. Karl Germer died in California in 1962. No will of Germer was offered for probate and the property of OTO remained in the possession of Germer's widow, Sasha Germer.

6. Sasha Germer died in 1975.

7. In 1976, plaintiffs obtained an order from the Superior Court of the State of California, Calaveras County, ``In the Matter of the Estate of Sasha Germer.'' The order decreed that plaintiff Grady McMurtry was authorized to take possession, on behalf of OTO, of certain property identified as belonging to OTO. Pursuant to that order plaintiff McMurtry and others took possession of properties which had formerly been in the possession of Crowley, Karl Germer, Sasha Germer and OTO.

8. Plaintiff OTO is now a California Corporation. It has a legal structure; is a membership organization; maintains records; has a set of beliefs; has an established set of procedures; conducts regular meetings; conducts financial transactions; initiates and promotes members; and follows the beliefs and practices derived from Crowley and the prior unincorporated OTO. It is a continuation of the organization, beliefs and practices originally established and conducted by Crowley and OTO.

9. Defendant Society Ordo Templi Orientis (``SOTO'') was incorporated in the State of Tennessee. SOTO is not the continuation of the organization, beliefs and practices originally established by Crowley and OTO.

10. Defendant Motta is a citizen of Brazil. He has for years been interested in the work of OTO and Crowley. Motta has caused some literary works of Crowley to be published, commented, and edited, in his own name and in the name of OTO and SOTO.

11. Plaintiff OTO now owns, holds all right and title to, has used, does now use, and has the right to use: the name ``Ordo Templi Orientis''; the initials ``OTO''; the various insignia, registers and symbols of OTO; all writings and publications of Crowley which were not assigned to others at the time of his death; the publications of other matters pertaining to OTO; and the trademarks, service marks, and copyrights pertaining to the same. Defendants do not own, hold, or have any right to the use of such properties.

12. The name ``Thelema'' in connection with publications is a part of the property owned by plaintiff OTO. Plaintiff Smith has used that name on behalf of plaintiff OTO since 1962. Plaintiff OTO has the

rights to the trademarks, service marks and copyrights of the name ``Thelema,'' and equivalents of that name, in connection with publications.

13. Defendants have used the name ``Thelema'' in publications subsequent to its use by plaintiffs. Defendants do not have ownership of or the legal right to use the name ``Thelema'' or its equivalents. Defendants' use of the name of ``Thelema'' was without the consent of plaintiffs and constitutes infringement of that name. Defendants' use of the name ``Thelema'' in connection with publications has caused confusion in the publishing industry and among purchasers of books, and will if continued cause confusion in the future. However, plaintiffs have not shown sufficient evidence of monetary losses from that confusion to support an award of compensatory damages for defendants' improper use of the name ``Thelema.''

14. Defendants' use, and purported registration of trademarks and copyrights under the names ``OTO,'' ``Crowley,'' and ``Thelema'' were done in contemplation of this litigation and were done without the rights of ownership of the property purportedly registered and copyrighted.

15. Plaintiff McMurtry is the acting OHO of OTO in the United States and is the highest overall member. Plaintiff McMurtry was personally assigned by Crowley, and continues to own, a 25% interest in Crowley's Magick Without Tears.

16. Defendant Motta is not the OHO of OTO.

17. In 1981 defendants published and distributed certain books in California and elsewhere which contained statements regarding the individual plaintiffs listed below. Certain of the statements were matters of opinion, or were matters pertaining to religious beliefs, and hence are protected under the First Amendment. The following

statements about individual plaintiffs were not protected and were libelous:

(a)Plaintiff P. Seckler (nee P. Wade, P. McMurtry) was accused of sending a gang to assault and rob Sasha Germer, and was alleged to have misappropriated property.

(b)Plaintiff Grady McMurtry was alleged to have committed slander, misappropriated property, pirated property, delivered property to the hand of thieves, and contributed to the death of Sasha Germer.

(c)Plaintiff H. P. Smith was alleged to be a thief.

(d)Plaintiff James Wasserman was alleged to have delivered property to thieves and to have pirated property.

18. The statements made about the plaintiffs enumerated in paragraphs 17-a, b, c and d were untrue and constituted libel per se.

19. The plaintiffs enumerated in paragraphs 17-a, b, c, d did not establish by sufficient evidence any special damages, but are entitled to general damages from defendants in the amount of \$10,000 each.

20. The publications of the libels in paragraph 17-a, b, c, and d were done with actual malice by defendants, with knowledge of their

falsity, and with a reckless disregard for the truth, and those plaintiffs are entitled to punitive damages from defendants in the amount of \$25,000 each.

21. Neither plaintiffs nor defendants are parties engaged in the media business, and are not entitled to rights or defenses attributable thereto.

22. There is not sufficient evidence to establish that defendants obtained any substantial gross revenue or profit from their publications, or that plaintiffs lost any gross revenue or profit, to support an award of damages to plaintiffs for defendants' use of plaintiffs' names, publications or symbols.

23. Plaintiff Wasserman was an agent of defendant Motta for certain purposes in 1976. Plaintiff Wasserman terminated that agency in 1976, and the termination was acknowledged by defendant Motta. Any cause of action by Motta for the breach of that agency relationship by Wasserman accrued in 1976.

24. No property of defendants was converted by plaintiffs. Even if some personal properties of defendants were included in the material

obtained by plaintiffs from Karl and Sasha Germer, they were obtained in 1976, and the obtaining was known to defendants in 1976.

25. Plaintiffs circulated among OTO members a letter written by defendant Motta to Karl Germer dealing with certain matters personal to Motta. Motta has not shown by sufficient evidence that the circulation was a violation of his right of privacy, or that the circulation caused him any special or general damages. The circulation was not done with malice, but in connection with the dispute between plaintiffs and defendants as to who was the OHO and who rightfully held the properties of OTO. The circulation occurred, and was known by defendant Motta to have occurred, more than one year prior to the filing of the complaint in this action.

26. Unless enjoined, defendants will continue to claim and use the name ``Ordo Templi Orientis'' and the initials ``OTO,'' and will continue to claim that defendant Motta is the OHO of OTO, and will use plaintiff OTO's names, insignia, initials, symbols, trademarks and other properties of plaintiff OTO to the injury of plaintiff OTO.

#### CONCLUSIONS OF LAW

1. To the extent that any of the above findings of fact may be deemed to be conclusions of law, they are incorporated by reference herein.

2. The libelous statements enumerated in paragraphs 17-a, b, c, and d of the findings of fact are libel per se, and general damages are presumed.

3. The other allegedly libelous statements about plaintiffs enumerated in the third and fourth causes of action of plaintiffs' first amended complaint are not actionable because they are matters of opinion or are religious matters protected by the First Amendment to the Constitution of the United States.

4. Any publications by defendants of allegedly libelous statements about plaintiffs which occurred subsequent to the filing of the first amended complaint cannot be the basis for any award of damages to plaintiffs in this action.

5. Plaintiffs are entitled to judgment on their first amended complaint against defendants as follows:

(a) On the first cause of action for unfair competition regarding the use of the name ``Ordo Templi Orientis,'' and the initials ``OTO, ''

and the insignia and other properties of OTO.

(b) On the second cause of action for infringement of trademarks owned by plaintiff OTO.

(c) On the third and fourth causes of action for the libels enumerated in paragraphs 17-a, b, c, and d of the findings of fact.

(d) On the fifth cause of action for unfair competition in the use of the name ``Thelema.''

6. By virtue of the decision of the United States District Court for the District of Maine, United States District Judge Gene Carter, in the action entitled Motta, et al v. Samuel Weiser, Inc., No. 81-0459, defendants are collaterally estopped from asserting certain of their counterclaims against plaintiffs. Judgment should be entered in favor of plaintiffs and against defendants on defendants' counterclaims as follows, both because of the collateral estoppel effect of that action and because of the findings of fact which are made above:

(a) Defendants do not own the Crowley copyrights.

(b) Motta is not the OHO of OTO.

(c) Defendants' purported registration of copyrights are not valid because defendants do not own the property purportedly copyrighted.

(d) Plaintiffs did not breach any copyrights of defendants, as alleged in defendants' first counterclaim.

7. Plaintiffs did not violate defendants' alleged trademarks regarding the insignia of OTO, as is alleged in defendants' second and eighth counterclaims.

8. Plaintiffs did not violate defendants' alleged trademarks regarding SOTO, as alleged in defendants' third counterclaim.

9. Defendants' fourth counterclaim is barred by the statutes of limitations, either by the two year statute of limitations provided in California Code of Civil Procedure Section 339 or by the three year statute of limitations provided in California Code of Civil Procedure Section 338; the cause of action accrued in 1976 and was barred prior to the filing of the complaint in this action in March 1983.

10. Defendants' fifth counterclaim is barred by the three year statute of limitations provided in California Code of Civil Procedure Section 338; the cause of action accrued in 1976 and was barred prior to the filing of the complaint in this action in March 1983.

11. Defendants' sixth counterclaim is barred by the one year statute of limitations provided in California Code of Civil Procedure Section 340; the cause of the action had accrued and was barred prior to the filing of the complaint in this action in March 1983.

12. Plaintiffs have not waived their statute of limitations defenses by not specifically asserting them in an answer to defendants' counterclaims.

13. Plaintiffs did not breach any federal trademark regarding the name ``Ordo Templi Orientis'' as alleged in defendants' seventh counterclaim.

14. Plaintiffs did not breach any federal trademark in the symbol ``OTO'' as alleged in defendants' eighth counterclaim.

15. Plaintiff OTO is entitled to the exclusive use of the trademarks and names claimed by defendants in their counterclaims, except those of SOTO.

16. Plaintiff McMurtry owns the interest in Magick Without Tears assigned to him by Crowley.

17. Plaintiff OTO is entitled to possession and ownership of: the remainder of the copyrighted material about OTO, the archives of OTO, and the remainder of the writings of Crowley.

18. Defendants' purported registration of trademarks are invalid and of no legal effect, because defendants did not and do not own the marks, except those of SOTO.

19. Plaintiffs are entitled to injunctive relief request in their counterclaim to the counterclaim.

#### JUDGMENT

Plaintiffs are to submit to this court, within twenty days of the date below, a proposed form of judgment incorporating these findings and conclusions. Plaintiffs are to simultaneously submit the proposed form of judgment to defendants, and within ten days thereafter defendants are to advise the court in writing what objections they have to the proposed form of judgment prepared by plaintiffs. Judgment will then be entered by the court.

Dated: July 10, 1985.

CHARLES A. LEGGE  
UNITED STATES DISTRICT JUDGE

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